Nebraska Real Property Appraiser Board

Commentary Relating to Cuomo FNMA/FHLMC Settlement Agreement & Implementation

INDEPENDENT VALUATION PROTECTION INSTITUTE

Office location/Parent Entity

It is our understanding that many entities have submitted or are submitting proposals to house the new Independent Valuation Protection Institute. As an appraisal regulatory Board, we feel that housing this Institute as part of the Appraisal Foundation, under the Appraisal Subcommittee, would be appropriate.

In August 1989 Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act, better known as FIERRA. Title XI of FIERRA, the "Real Estate Appraisal Reform Amendments," was specifically targeted at solving appraisal-related problems discussed in Congressional testimony. Title XI required federally regulated financial institutions, such as federally insured banks, thrifts and credit unions, to use State certified or licensed appraisers to perform appraisals in connection with federally related transactions. The relationship established by Title XI created a complementary relationship between the States, the private sector, and the Federal government. Title XI authorized the private sector a private not-for-profit organization, The Appraisal Foundation and its two independent boards, the Appraiser Qualifications Board and the Appraisal Standards Board to establish uniform minimum appraiser qualifications standards and uniform standards of professional appraisal practice which would be applied by the States. Title XI then created the Appraisal Subcommittee (ASC) to oversee the activities of the States and The Appraisal Foundation.

The Appraisal Foundation, under the Appraisal Subcommittee, already houses and oversees the Appraisal Standards Board (ASB) and the Appraisal Qualifications Board (AQB) as previously exhibited. Positioned under the Appraisal Subcommittee, staff and resources already exist to support the new Institute.

The Appraisal Subcommittee and the Appraisal Foundation already oversee appraisal regulation and have lines of communication established with individual State Regulatory Agencies. The established communication certainly could be utilized and should eliminate any need for duplication of efforts.

The Institute will have the responsibility to refer complaints to appropriate regulatory agencies. Considering the Subcommittee provides oversight of the appraisal regulatory agencies, such oversight efforts should enable the Institute to establish whatever enhanced communication it feels is necessary to follow the enforcement processes that come as a result of referrals generated by the Institute.

Communication Network

Communication between the Institute and related regulatory agencies is crucial. Clear communications that have an aggregate history will be important to the success and accountability of the clearinghouse and referral role that the Institute will play. A web based system with mail notification with secure access is the preferred method of communication. Such a system would allow for email notification of an event or update from one entity to the other. Such communication should involve notification of the following: complaints, referral of enforcement cases, status of enforcement cases, and statistical information and issues.

Mediation
Categories involving Institute mediated involvement should be limited to the following:

- Value disputes that may exist between appraisers, lenders, and AMCs.
- Payment disputes that may exist between appraisers, lenders, and AMCs.
- The removal or placement of an appraiser on an "Approved" list by lenders and/or AMCs. This is likely the most important issue considering such a system currently exists however, the current system lacks due process or accountability. Such a clearinghouse and system of accountability should be mandated and housed by the Institute.

APPRAISAL REPORT QUALITY

Appraisal Management Companies
Lack of Regulation
Appraisal Management Companies (AMCs) provide valuation products in a direct Appraiser/Vendor and Client relationship. It is that same entity that is providing the client with an appraisal product. There are no agencies that monitor or regulate such entities and yet they are responsible for the valuation of thousands of appraisal reports on a daily basis.

As is evidenced by the EAppraisit, Washington Mutual Case, Appraisal Management Companies have not always acted as disinterested third parties providing independent valuation services. In the referenced case, abuses reportedly have included "pushing" appraisers by threatening to cease doing business if certain values were not met.

Cash flow continues to be the primary motivation of AMCs. Cash flow is typically accomplished at the expense of appraisal quality by "squeezing" the individual appraiser through fee reduction, unreasonable turn around times or both. Due to the lack of adequate time and compensation, the appraiser is compelled to generate a work product that received very little consideration in terms of due diligence. Such appraisal products were regularly delivered to the secondary market as compliant reports.

Appraisers need adequate time and compensation to perform work that is compliant with the *Uniform Standards of Professional Appraisal Practice* (USPAP). While AMCs will argue that decisions made by individual appraisers are "business decisions," no one can argue the fact that AMCs use unreasonable leverage in their dealings by making apparent their national or regional client relationships and the amount of appraisal work that they can disburse to individual appraisers. In many cases, these AMCs control the market and use that leverage unfairly.

Management and staff valuation specialists in such organizations are not typically credentialed in the States that are in their territory of work. In one instance a "Specialist," based and credentialed in another state, working as a "Valuation Dispute Specialist," provides value conclusions in the State of Nebraska and regularly provides those value conclusions in Nebraska for the AMC. The individual "Specialist" is not credentialed in the State of Nebraska. The "Area Manager," who is responsible for the valuation services in Nebraska and several other States, is not credentialed at all. States regulating actions, on behalf of lenders, property owners or other affected parties, have little, if any rights to due process or the means to bring action against the AMCs and non-credentialed employees for deficient work.

Essentially, Appraisal Management Companies are free to act as they please without any oversight or regulatory scrutiny. The substandard appraisal products are, in this Board's opinion, the direct result of the actions and behaviors exhibited by the unregulated Appraisal Management Companies.

Quality of Appraisal Panels

Another concern of this Board is the quality of selected professionals to serve on panels. While selected appraisers are credentialed by individual State regulatory bodies, not all appraisers are geographically competent or are competent to perform work for all types of real estate. Current “Primary Criteria” of Appraisal Management Companies, as experienced by members of our Board and those of credentialed appraisers who have communicated with our Board members fail to meet an acceptable standard of: competency of credential, fee, and turnaround time.

The following criteria tends to be common when regulated banks and other financial institutions are preparing approved appraiser lists for approval by their Board of Directors. These criteria are rarely sought out, considered or scrutinized by an AMC.

Designations

Designations or credentials indicate that the appraiser has received training and experience that is required at or beyond the levels set forth by State Regulatory Boards. Achievement of such designations or certifications will likely provide the client with a higher level of competency by meeting standards during the course of earning a credential or experience and accountability by achieving a professional designation.

Designations within the appraisal community are earned and not honorary. Designations indicate a specialization or an achievement. Professional designations and achieved credentials that signify a higher level of competence for any given area of appraisal should be considered.

Work Experience

Is the appraiser geographically competent in the areas or locations where they are designated to accept appraisal assignments?

Does the appraiser have experience or knowledge for all property types or is that appraiser’s practice limited to certain property types?

Does the appraiser have special skill sets that makes that appraiser particularly well qualified to perform work relating to specialized properties or specialized analysis such as relocation valuation?

An important component to geography competency is the availability of data sources. Memberships may include one or more MLS systems. Private data services may be available or the appraiser may have to rely on access to county record databases, zoning or planning records, or flood data. Does the designated appraiser have access to the data sources to produce a credible report? For that matter, is the geographic data even available electronically or will the data be collected by time spent in various courthouses or real estate offices.

Another component of measuring competence is attributed to credible time spent in the profession. While we would ask about time and reporting in a typical job interview, the question is rarely asked by AMCs. Professional time allocated to certain types of appraisals reports and property types tend to be revealing during the appraisal selection process.

Work Samples

Work samples can be generated in a manner that does not violate confidentiality or result in misleading reports. The composition and techniques found in reports that are prepared by appraisers on a daily basis will provide a sense of the quality of work provided by that appraiser. The request for work sample submission will separate the real appraiser from the form filler.

Minimal or “assembly line” securitization of submitted reports is performed.

Work product reviews tend to be based on the “checklist” method and very little in terms of due diligence is actually performed. At minimum, the due diligence should include data verification and a USPAP overview.

References

References are rarely requested. In many instances little or no input from experienced local users of appraisal products is utilized. Experienced or knowledgeable local users would include compliance and underwriting departments in credible lending institutions; senior lending or compliance officers within those institutions; and experienced realtors that are active in relocation.

Follow-up by AMCs is rare

As a result of selection criteria, members of panels are typically comprised of individuals that are minimally qualified. Due to such circumstances, individual appraisers may not be able to adequately perform the assignment in which the best interests of the lender/client, the consumer/borrower, or the public is first and foremost. To insure that qualified appraisers are performing quality work, standards of selection must be open and must be comprehensive. A process to follow-up by an AMC must be utilized to scrutinize the quality of selected appraisers and reports.

Quality of Work/Reviewer Credential and Qualifications

In many, if not most instances, staff appraisal reviewers have received minimal training from their employer. They have little or no field experience and many are not credentialed in their resident state. Most reviewers are not credentialed in the state in which the Subject of Review is located, and yet many of these reviewers are responsible for providing an opinion of value to the client of the AMC.

Most reviewers are working off of a “checklist” to see if the report complies with “Client Standards”. Dependent on client motivations, these “Standards” may or may not comply with USPAP. The scope of review typically incorporates the marking of all boxes, whether some comment (appropriate or not) are found in the narrative sections; whether sales are timely and have some proximity to the Subject; whether adjustments fall with certain guidelines; or whether value conclusion fall within the range set in the neighborhood analysis. The result is a process that simply “checks” to see if the appraisal form was filled out correctly and fails to take into consideration the assignment.

Many staff reviewers are not geographically competent. Reviewers are looking at reports utilizing a checklist or a set of guidelines and may not possess the knowledge to determine the appropriateness of appraisal development including community and/or neighborhood analysis; site analysis; improvements analysis; valuation approaches; data selection; data analysis and final conclusion.

Many reviewers do not have the ability, education, or training to determine if a report meets minimum USPAP compliance – the result of inexperience, minimal training and lack of geographic competence. We have created a generation of appraisers that write reports “to client needs” by filling out appraisal forms in a manner that provides very little real information and finally we have reviewers and appraisers who cannot review a report or produce a report that meets the minimum USPAP requirements.

POSSIBLE SOLUTIONS

Regulation of Appraisal Management Companies
Appraisal Management Companies tend to be regional or national in terms of their service areas. As a result, the regulation of Appraisal Management Companies should fall under a system that includes Federal and State oversight.

On the **Federal** level the following oversight should be provided:

Compliance with Fair Trade Practices including Anti-Trust Laws.
. Compliance with USPAP standards.
. Compliance with Copyright and Intellectual Property Laws.
. Compliance with appraiser selection standards and appraisal reporting standards.
. Compliance with new Cuomo-FNMA/FHLMC reforms.

Possible venue for that regulation might be the Appraisal Foundation or the newly established Independent Valuation Protection Institute. Either or both would require an amendment to existing law.

On the **State** Level the following oversight should be provided:

Hold AMCs to the same standard and scrutiny as individual appraisers.
All AMC and related staff that provide or convey opinions of value should be held to the same standard as the individual appraiser engaged by the AMC. .
Any AMC management or staff involved in appraiser selection or appraisal review that provides an opinion of value and communication of the appraisal report to the lender/client must be credentialed in the state in which the Subject of the appraisal report is located.

The final consideration for placement of the Institute and accountability of its role should be the burden of the protection of the public as well as the integrity of the appraisal profession. All roads lead to the final accountability – understanding that it is imperative for regulatory tools to be accountable not only to a regulatory agency but to the public. Standards and accountability must be created and established to protect not only the qualifications of an appraiser, the quality of a report, a system for regulation, or for that matter, the means by which such a regulatory system is established - but first and foremost, the accountability and protection of the public and to maintain the trust that must be garnered by the nature of the profession of appraisal.